



Risk Transfer Suggested Practices



Common business practices, such as leasing, subcontracting maintenance, heat-treating and relying on third-party transportation services can bring unexpected risk. In some cases, uncontrolled risks like these have caused companies to permanently shut down.

Fortunately, you can take action to minimize unnecessary risk exposure and shift the risk of loss to the responsible party. This is known as “risk transfer,” which is commonly achieved with proper business insurance.

You may be able to reduce your chances of unknowingly accepting someone else’s liability or being exposed to additional liabilities by following the practices suggested in this guide.



Insurance

Determine appropriate coverage(s) and limits

Determine the appropriate coverage(s) and the minimum amounts of insurance you require from your business partners, including subcontractors, suppliers, service providers, tenants and third-party transportation services. When establishing insurance requirements, we recommend that you first determine what level of protection you need. Some factors to keep in mind are the type of work involved, the value of your property and building(s), business continuity issues and the potential for the other party to cause losses. You should consider consulting your own insurance advisor and legal counsel when determining the adequacy of your insurance requirements.

Require certificates of insurance from subcontractors, tenants and service providers

A certificate of insurance (COI) is a snapshot of insurance coverage in place. The COI does not confer any rights to the certificate holder. You can require that your business partners (such as transportation companies, plumbers, landscapers, and cleaning services) provide COIs for any insurance coverage.

The five common types of coverage are:

- Workers’ Compensation/Employers Liability
- Commercial Automobile Liability
- Property
- General Liability/Completed Operations/Public Liability
- Umbrella

Conducting business with uninsured and under-insured contractors, tenants and service providers should be avoided.

We recommend accepting COIs from the insurance company or agent only, not from the subcontractor, tenant or service provider, to help protect against inaccurate certificates.

A current COI does not transfer risk; it provides evidence of existing insurance. If you don't request a COI, you may discover that the business partner either does not carry insurance or the insurance they carry does not provide adequate coverage or limits. In that case, you or your insurance carrier may be financially responsible for all or part of losses arising from the business partner's actions.

Review certificates of insurance

Review COIs upon receipt and annually for multi-year relationships. The purpose of the review is to verify the continued existence of coverage and to determine whether existing coverage limits are adequate and meet the requirements of your agreement.

We recommend that you install the review process as a routine function performed by administrative personnel. A checklist can be developed for this purpose to ensure consistency. Establish and document procedures to follow when certificates are not received or if the information does not meet the requirements of your agreement. Send a letter seeking the needed changes to the other party and follow up until a current certificate meeting all requirements is received. Maintain the certificates in your file for the suppliers, subcontractors, tenants or service providers for future reference.

Enforce certificate of insurance requirements

Consider using specific measures to encourage adherence to COI requirements. With assistance from legal counsel, these measures may include contractual remedies such as:

- Not using the services until satisfactory evidence of compliance is received.
- Terminating the contract unless satisfactory evidence of compliance is provided.

Monitor certificates of insurance

Once a contract, lease or purchase order containing insurance requirements and enforcement provisions is executed, a system is needed to monitor the other party's continued compliance with the requirements. Establish a reminder system that alerts the employee responsible for reviewing the COIs of upcoming policy expiration dates and target dates for compliance with any deficient items. A simple example of a reminder system is a follow-up log sorted by insurance policy expiration dates or target compliance dates. This will allow for easier retrieval and follow-up each month.

We recommend that this reminder system includes a procedure for reordering COIs prior to policy expiration dates. A form letter can be created and sent to all appropriate recipients at least 60 days prior to the expiration date. This will help ensure that the coverages and limits are maintained throughout the course of the project, lease or ongoing business relationships. Copies of the updated COIs may be placed in project files, vendor files or elsewhere as appropriate.



Written agreements and contracts

Contracts you ask others to sign

Establish written agreements for subcontractors and service providers

Securing signed and written contracts from your business partners before they supply materials, perform services, begin work or before their lease begins can prove beneficial to enforcing the terms of your agreements. Oral contracts, handshake deals or other informal agreements can be difficult and costly to enforce. In many cases, participants to unwritten agreements may have different recollections of the terms.

A written contract can define the parties' responsibilities regarding insurance, indemnity, payments, tools and materials to be used, safety requirements, services provided and other aspects of the business relationship.

You can use a template to draft your own contract, but it is important that your legal counsel review all your written contracts to ensure that they adequately protect your interests and are tailored to your specific situation. Use of form contracts without consulting a competent legal professional and without consideration of your circumstances can lead to unexpected and undesirable results.

Review all contracts for correctness and modifications before signing

Designate appropriately trained personnel within your organization who will be responsible for reviewing COIs and signed contracts, leases or purchase orders. Your legal counsel can provide review guidelines for such personnel. It's important that this review takes place before any work begins or any lease commences. All too often, COIs, contracts, leases and purchase orders are received but not reviewed until after an incident occurs – at which time it may be too late to properly protect your interests. We recommend that when using third-party transportation companies, you take steps to avoid the possibility that your motor carrier is perceived to be operating as your agent. Consider confirming with your legal counsel that the contract with the motor carrier specifically spells out that they are not the agent and you do not control the means and methods the motor carrier uses for day-to-day work.

Enhance insurance protection by requiring business partners to:

- Obtain their insurance coverage from a carrier that is acceptable to you (typically an “A” rated carrier).
- Name you as an additional insured on their primary and excess insurance policies. This can effectively add you to that policy relative to exposures and hazards arising out of their work on your behalf. Being an additional insured provides certain rights that you do not enjoy as a certificate holder. It is important to obtain the additional insured endorsements from their insurance carrier or agent. This document specifies what coverage you have under their insurance. You need to be covered for ongoing operations (claims that occur while they are working on your premises) and completed operations (claims that occur after their work or service has been completed). To assure coverage for both scenarios, you will probably need to collect two endorsements. Your insurance advisor can provide further direction since there are many different versions of endorsements. Be aware that you are in a much stronger position if you obtain additional insured endorsements in addition to a certificate of insurance instead of just obtaining a COI with “additional insured” typed on it.
- Specify that their insurance coverage is primary and that your insurance will not contribute until all other insurance is exhausted.
- Provide a waiver of subrogation to you and all higher tiers.
- Provide to you at least 30 days’ notice if their insurance is to be cancelled.

Ask legal counsel to review hold harmless/indemnity agreements

Indemnification agreements specify that one party agrees to protect the other party against damage, loss or liability (i.e., to hold them harmless). The party that agrees to provide this protection is the “indemnitor.” The party that gets the protection is the “indemnitee.” These contracts represent an attempt to clarify in advance which party will assume which liability.

It may be to your benefit to transfer as much liability to the other party as state law allows. Countries and jurisdictions differ in how much liability can be transferred through indemnity clauses. Your legal counsel can advise you in this regard. Indemnification and insurance protections operate separately. The indemnitor may still be obligated to reimburse the indemnitee beyond whatever insurance the indemnitor has in place. Also, as with additional insured requirements, the indemnitor should agree to indemnify all higher tiers.

Contracts you are asked to sign**Carefully review contracts before signing**

Designate people with the training and authority to sign contracts for your company. Have contracts reviewed by legal counsel and your insurance advisor before signing them.

Attempt to modify unfavorable terms

Evaluate the risk you are taking on in light of the value of the contract as a whole. Is the business you receive worth the potential liability you assume? Can you do business with the other party without assuming as much liability? See the discussion above regarding contracts that you ask others to sign to determine what may be required of you and if that will be acceptable. Propose terms that may be more in your favor.

**Recordkeeping/documentation****Maintain records**

Retain purchase orders, leases, contracts and COIs in accordance with all applicable laws and regulations in the jurisdictions and industries in which you operate.

Seek legal advice

Consult your legal counsel for information and advice concerning any laws and regulations applicable to your organizations in the territories you are operating in.

To learn more about managing your risk and increasing efficiency, visit cna.com/riskcontrol.